HON'BLE SRI JUSTICE BILAL NAZKI
AND
HON'BLE SRI JUSTICE NOOTY RAMAMOHANA RAO

WRIT PETITION No.1079 of 2007

Date: 03-04-2007.

Between :

B.N.Rama Krishnaiah.

.....Petitioner

And

The Deputy Transport Commissioner and Secretary,
RTA, Chittoor.

.....Respondent.

For the petitioner : Sri.Noushad Ali, Advocate.

For the Respondent: GP FOR TRANSPORT

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> Head Note:

? CITATIONS:

AIR 1975 SC 17

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ORDER : (Per Hon'ble Sri Justice Bilal Nazki)

Counter has been filed and we have heard learned counsel for the parties at length. With their consent, the writ petition is decided at this stage.

The petitioner is Proprietor of a Maxi Cab No.KA-02B-8224. He belongs to Mysore in the State of Karnataka and the vehicle is registered in Karnataka with an authorization for A.P. State, to ply throughout India. The permit is valid from 02.09.2003 to 01.09.2008. The authorization is valid till 01.09.2007. It is covered by payment of tax to the Home State valid upto 31.01.2007. Its insurance and fitness certificates were valid on the

relevant date. Although the petitioner's vehicle was authorized to ply within the State of Andhra Pradesh, yet, it did not ply in the State of Andhra Pradesh at any time after the permit and authorization were granted. According to the petitioner, the vehicle was kept in the State of Karnataka, the Home State, and was being used in that State only. Vehicle did not operate, according to the petitioner, in the State of Andhra Pradesh and as such, no tax was payable by the petitioner to the State of Andhra Pradesh. It is the contention of the learned counsel for petitioner that although the vehicle in question was registered in the State of Karnataka and was authorized to ply in the State of Andhra Pradesh, it had to pay the tax only to the Karnataka State Government and tax to the State of Andhra Pradesh on its entry into Andhra Pradesh. If there was no occasion to enter into the State of Andhra Pradesh, the tax could not be levied on the petitioner's vehicle. The mere authorization to ply the vehicle in the State of Andhra Pradesh does not entitle the authorities in Andhra Pradesh to demand tax.

There are some admitted facts. One of the admitted facts is that the vehicle had not been used in the State of Andhra Pradesh prior to the date when the vehicle was found at the Check-Post between the State of Andhra Pradesh and the State of Karnataka i.e. on 29.11.2006 when a check report was prepared by the Motor Vehicle

Inspector. On finding the vehicle on the border of Andhra Pradesh, the authorities concerned demanded tax from the petitioner from the date the authorization to ply in Andhra Pradesh had been made. The petitioner paid tax for one month, but inspite of that, he was not allowed entry, according to him, in to the State of Andhra Pradesh.

In the counter affidavit, mainly it has been stated that once a person gets an authorization to ply the vehicle in a State other than the State where the vehicle is registered, he has to pay the tax to the State with respect to which an authorization has been obtained.

The only question before this Court is whether mere authorization to ply in a State entitles that State Government to levy and recover tax from such a vehicle. Mr.Noushad Ali, learned counsel appearing for petitioner, submits that in terms of Section 3 of The Andhra Pradesh Motor Vehicles Taxation Act, 1963 (for short 'the Act'), which is the charging Section, the State Government can direct that a tax can be levied on every motor vehicle used or kept for use in a public place in the State of Andhra Pradesh. He submits that even if the Rules provide for levying tax on any vehicle which does not fall within Section 3 of the Act, that would be illegal, because, any tax collected on a motor vehicle, has to be in conformity with the mandate of Section 3 of the Act. He further submits that tax can only be levied and collected on a

motor vehicle provided it is used or kept for use in a public place in the State of Andhra Pradesh. Admittedly, the present vehicle was not used in Andhra Pradesh and it was not even kept for use in the State of Andhra Pradesh, therefore, the Government has no power to levy tax on such a vehicle even if there was an authorization. We find considerable force in this argument. However, the learned counsel for respondent has drawn our attention to the Rules framed under the Central Motor Vehicles Rules, 1989 (for short 'the Central Rules'). According to him, Rule 83 of the Central Rules provides for payment of tax on mere authorization. We are afraid we cannot accede to such an interpretation being placed on Rule 83 of the Central Rules. Rule 83 is extracted as under;

> *"**83. <u>Authorisation fee</u>:-** (1) An application for the grant of authorization for a tourist permit shall be made in Form 46 and shall be accompanied by a fee of Rs.500 per annum in the form of a bank draft.*
>
> *[(2) Every authorization shall be granted in Form 23A, in case the certificate of registration is issued on Smart Card or shall be granted in Form 47, in case the authorization is in paper document mode subject to the payment of taxes or fees, if any, levied by the concerned State. The authority which grants the authorization shall issue to the permit holder separate receipts for such taxes or fees in respect of each bank draft and such receipts shall be security printed water-mark paper carrying such hologram as may be specified by the concerned State/Union Territory:*

Provided that the Bank Drafts received in respect of taxes or fees shall invariably be forwarded by the authority which grants the authorization to the respective States:

Provided also that the use of such security printed water-mark paper carrying such hologram shall come into force on or before six months from the date of commencement of the Central Motor Vehicles (Third Amendment) Rules, 2002.]

[(2A) The authority which grants the authorization shall inform the State Transport Authorities concerned the registration number of the motor vehicle, the name and address of the permit holder and the period for which the said authorization is valid:

[Provided that where the permit holder undertakes to pay the tax direct to the concerned State Transport Authority at the time of entry in his jurisdiction, the authorization shall expressly state that it has been issued subject to payment of taxes to the concerned State Transport Authority.]]

(3) The period of validity of an authorization shall not exceed one year at a time."

This Rule of the Central Rules has to be read as a whole along with Sub-Rules and provisos. One of the provisos, which has been quoted above, lays down that a permit holder can undertake to pay the tax direct to the concerned State Transport Authority at the time of entry in his jurisdiction. Therefore, there is no doubt that the tax has to be paid for a motor vehicle in a State which is not

its Home State, on entry to that State. This tax may be paid in advance in terms of Rule 83 sub-Rule (2) or it may be paid in accordance with proviso to which a reference has been made by us. Rule 83 merely lays down the procedure as to how the authorization fee is to be collected. Rule 83 cannot be used to levy a tax, which is not levied otherwise by any provision of the Act.

The learned counsel for respondent has also drawn our attention to Rule 12-A of the A.P.Motor Vehicles Taxation Rules, 1963 (for short 'the Rules'), which is reproduced as under:

> *"**12-A. Liability for payment of tax in respect of motor vehicles kept for use:-***
>
> *[For the purpose of Section 3 of the Act, a motor vehicle shall be deemed to be kept for use and is liable to tax unless the registered owner or the person having possession or control of the motor vehicle intimates in writing to the licensing officer before the commencement of the quarter for which tax is due that the motor vehicle shall not be used after expiry of the period for which tax has already been paid. The Licensing Officer shall, on receipt of the intimation, acknowledge its receipt]:*
>
> *Provided that in the case of non-transport vehicles, if the owner of the vehicle fails to submit the stoppage report within the period specified above but subsequently gives an affidavit with full details to the effect that the vehicle was not in existence or that it was already disposed of to another person and that he is no more in possession of it, or that the tax in respect of the vehicle was paid elsewhere in the same State or in some other State and as such he is not liable for payment of tax in the jurisdiction of that*

Licensing Officer or proves to the satisfaction of the Licensing Officer that the vehicle has not been used, it may be deemed that the vehicle has not been kept for use:

[Provided further that nothing in this rule shall apply in respect of vehicles for which life time or lumpsum tax is prescribed.]

Provided further that in the case of transport vehicle, if the vehicle is not covered by a valid fitness certificate or a valid permit, it may be deemed that the vehicle is not kept for use as a transport vehicle and is not taxable as such.

[Provided also that in the case of public carrier vehicles registered and normally kept in any one of the States of Madras, Mysore, Kerala, and Maharashtra and covered by permits to ply in this State without counter-signature under the rules framed under Section 68(2)(hh) of the Motor Vehicles Act, 1939 (Central Act 4 of 1939) in pursuance of the special reciprocal agreement entered into between the States of Andhra Pradesh, Madras, Maharashtra, Mysore & Kerala, the vehicle shall be deemed to have been kept for use till the expiry of their permits irrespective of this rule, unless the vehicles are kept under non-use after the prior intimation for a period of whole year in any State or States.]"

According to this Rule, a motor vehicle shall be deemed to be kept for use and is liable to tax unless the registered owner or the person having possession or control of the motor vehicle intimates in writing to the licensing officer before the commencement of the quarter for which tax is due, that the motor vehicle shall not be used after expiry of the period for which tax has already

been paid. This Rule operates altogether in a different field. It operates with respect to those vehicles which are registered in the State of Andhra Pradesh and it will not apply to those vehicles which are registered in another State and can enter the State of Andhra Pradesh by virtue of authorization under Rule 83 of the Central Rules. In any case, Rule 12-A lays down that a vehicle shall be deemed to be kept for use, even if, for a particular period, it is not used, but it is not communicated to the authorities. That pre-supposes that the vehicle was in use in the State of Andhra Pradesh. In the present case, the vehicle has never come to the State of Andhra Pradesh. The learned Government Pleader has also drawn our attention to the last proviso of Rule 12-A and submits that there has been an agreement between the States of Madras, Mysore, Kerala and Maharashtra and in terms of this proviso, even if the vehicle was in the State of Karnataka, it could be taxed under this proviso. The learned counsel for petitioner submits that this proviso applies to public carriers as defined in Section 2(23) of the Motor Vehicles Act, 1939 (for short 'the 1939 Act'), which reads as under;

> *""Public Carrier" means an owner of a transport vehicle who transports or undertakes to transport goods, or any class of goods, for another person at any time and in any public place for hire or reward, whether in pursuance of the terms of a contract or agreement or otherwise, and includes any person, body, association or company engaged in the business of carrying the goods of persons associated with that person, body, association or company for*

the purpose of having their goods transported."

On the face of it, the present vehicle is not a public carrier within the meaning of Section 2(23) of the 1939 Act, because, it is not a vehicle which is used for the purpose of transporting goods.

The learned counsel for petitioner also relied on a judgment of Supreme Court reported in **Bolani Ores v. State of Orissa**[1], wherein similar questions of law were involved. In para 29 of this judgment, the Supreme Court held—

> *"The Taxation Act is a regulatory measure imposing compensatory taxes for the purpose of raising revenue to meet the expenditure for making roads, maintaining them and for facilitating the movement and regulation of traffic. The validity of the taxing power under Entry 57, List II of the Seventh Schedule read with Art. 301 of the Constitution depends upon the regulatory and compensatory nature of the taxes. It is not the purpose of the Taxation Act to levy taxes on vehicles which do not use the roads or in any way form part of the flow of traffic on the roads which is required to be regulated. The regulations under the Motor Vehicles Act for registration and prohibition of certain categories of vehicles being driven by persons who have no driving license, even though those vehicles are not plying on the roads, are designed to ensure the safety of passengers and goods etc. etc. and for that purpose it is enacted to keep control and check on the vehicles. Legislative power under Entry 35 of List III (Concurrent List) does not bar such a provision. But Entry 57 of List II is subject to the limitations referred to above, namely, that the power of taxation thereunder cannot exceed the compensatory nature which must have some*

nexus with the vehicles using the roads, viz. public roads. If the vehicles do not use the roads, notwithstanding that they are registered under the Act, they cannot be taxed."

In view of the above discussion, we are of the view that the vehicle in question was not liable to be subjected to levy of tax in the State of Andhra Pradesh merely because it was authorized to ply in the State of Andhra Pradesh although it was registered in the State of Karnataka. Such vehicles are liable to payment of tax in the State of Andhra Pradesh only after their entry into the State of Andhra Pradesh.

Therefore, we allow the writ petition and quash the impugned order. We are told at the Bar that the vehicle in question was not allowed to enter the State of Andhra Pradesh although it had even paid the tax for one month. Therefore, we hold that the petitioner shall be entitled to refund of the amount paid by him.

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BILAL NAZKI, J

3rd April 2007

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NOOTY RAMAMOHANA
RAO, J

N.B.:
L.R.copies to be marked.

(b/o)

ajr

[1] AIR 1975 SC 17